

(916) 323-7715

January 17, 1985

Dear Mr.

On Monday, January 7, 1985, _____ the Board's Exemption Officer, and I met with Ray _____ one of the Church's Ministers of Music, to discuss the Church's present Music Ministry, conducted on the Church's property, in light of requirements which must be met for the property to remain eligible for exemption from property taxation. We discussed, particularly, that portion of the ministry carried on under the name Academy _____

Per the Church's Ministry of Music pamphlet:

"Music Objective

Music and religion have always been closely associated. Wherever there are churches, we find music. Its effectiveness depends largely upon the manner and degree in which it is taught and used.

* * *

"The music education program of the church is referred to as the 'Music Ministry' and embraces all music and areas of church life. A music ministry within the church is organized for the purpose of developing a fully graded and comprehensive church music education program. It offers participation to all, magnifies worship, promotes Christian Education and Evangelism, and benefits all ages and organizations within the church structure.

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"The Music Ministry functions in five specific areas: Congregational, Choral, Instrumental, Training, and Promotional:

* * *

IV. Training - We must educate our congregation and train people for the 'work of the ministry'. Often informing and training people in the use of their spiritual gifts, talents, and abilities is a weak area of Christian education. Through our 'Academy of the Arts' and other means for training, we desire to see training become a 'strong tool' in spiritual development.

* * *"

Per the Church's Academy

Pamphlet:

"Purpose

The Music Ministry has a prominent role in the entire ministry of a church and the activity of a community. It is not a mere attachment to the church calendar nor is it another 'busy' activity for individuals to be involved with on a weekly basis...it is so much more! It is a vital part of the Christian Education we provide for every member of our family.

One music objective is to lead everyone to a more meaningful involvement in worship, missions, and Christian stewardship through the arts (music). Scripture makes plain this involvement. Music was and is to play a very important part with the people of God. In the Bible, music is utilized frequently. A trumpet may call to worship or to war; a crazed king is calmed by shepherd songs; when Moses crossed the Red Sea, he gave a song of rejoicing and deliverance to the Lord;.....

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"Program

This program of instruction is to lead you into a useful ministry of serving the Lord by developing your God-given gifts in the area of music.

I. Instruction will be offered in the following categories:

- A. Vocal
- B. Piano
- C. Instruments of the band and orchestra

II. You will be placed in basically one of three group levels to allow you to progress at your own pace and speed of learning. By having private instruction, your teacher will be able to move you from one level to another, depending on your ability and individual needs. Some of you will progress rapidly, while others will mature at a slower pace. The lesson is designed for you and is to be enjoyed by you.

III. Along with the development of technique for singing or playing, you will be given instruction in musicianship, notation, theory, and stage presence. Also you will be coached on how to present songs, hymns, and spiritual songs as 'music with a message.' You will be exposed to a variety of musical styles with which to glorify God.

IV. You will be responsible for obtaining or investing in a good, playable instrument. Nothing can be more discouraging to a student than having an instrument that just does not play well either because of inferior workmanship and materials, or disrepair!

V. You have the opportunity to have a private one-half hour lesson each week and, for those who wish, a group ensemble experience each week. The goal of all music activities will be to prepare you to use your talent to glorify God.

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VI. A program of this scope has to be supported financially. A lesson-lab fee is charged to each student to help with the expenses and allow the Academy to bring in qualified instructors. The Academy operates on the quarter system, allowing students to work close to the public school schedule. (Fees may be paid quarterly or monthly.)

VII. Performance activities at all levels of development will be scheduled during each quarter. These may include recitals, music festivals, concerts, church services, and community activities."

As explained by Mr. Johnson, the Academy of the Arts program is conducted as a Church Ministry by the Church's two Ministers of Music and by a third person who provides instruction for piano students. Fees, recently \$6, \$7, or \$8 per half hour of instruction, depending upon level of instruction, are paid directly to the Church, which compensates the Ministers of Music as Church employees and which compensates the piano instructor based upon 75 percent of the fees derived from students whom he instructs.

Review of our files discloses that the Church has not previously claimed the welfare exemption. Presumably then, the Church has been claiming the church exemption, which exempts from property taxation buildings, land on which they are situated, and equipment used exclusively for religious worship. Once it is established that the primary use of a church facility is for purposes of religious worship, certain incidental uses supportive of the primary religious worship use and involving present or prospective members of the congregation will not interfere with the exemption. Business meetings of a Church's governing body, religious instructional sessions, practice sessions of choirs, and most activities of auxiliary organizations accountable to the local church authority usually meet the criteria for qualifying incidental uses.

In this instance, the Church's Music Ministry, including its Academy, is a Church activity and, absent the charging of fees in conjunction with the Academy, such Ministry would meet the criteria for qualifying incidental uses. The question, then, is whether the charging of fees in conjunction with the Academy requires a different conclusion.

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To the extent that instruction, including instruction offered by the Academy _____ provided by the Church constitutes religious training, we believe that the Church is pursuing its religious purposes and engaging in activities designed to promote and foster its religious precepts. Where purposes and activities are religious rather than charitable, the charging of fees is usually not a relevant consideration, and we believe it is not a relevant consideration in this instance. Thus, we are of the opinion that the Church's Music Ministry, including its Academy _____, meets the criteria for qualifying incidental uses, and that the Church may continue to claim the church exemption for its Church property used therefor.

Because of the "narrow line" between the providing of instruction/music lessons by religious organizations for religious instructional and training purposes and the providing of instruction/music lessons by others engaging in such in pursuit of their livelihoods, however, an assessor may choose not to grant a church exemption to the extent that the exemption has been claimed therefor. Thus, the welfare exemption becomes the applicable exemption for that portion of the property so used, and the charging of fees can become a relevant consideration where the amounts thereof are excessive. Where such is the case, the organization can run afoul of Revenue and Taxation Code Section 214(1), which provides that to be eligible for the exemption, organizations cannot be operated for profit.

For the same reason, the charging of fees can become a relevant consideration also where there is any question as to whether the real purpose of a religious organization in providing instruction/music lessons is for religious instructional or training purposes. Absent such religious purposes, the providing of instruction/music lessons in return for fees is nothing more than the providing of paid-for services, which must be considered in light of welfare exemption requirements applicable to organizations claiming to be charitable rather than those applicable to organizations claiming to be religious. And use of property for commercial purposes will result in such property being ineligible for exemption. Per the Board's 1984 Decision In the Matter of The Crystal Cathedral Of The Reformed Church In America, et al., in part:

"When the Board is evaluating the primary use of the property of an institution enjoying the welfare exemption, evidence that establishes any planned systematic commercial use of that property is cause for the welfare exemption to be denied for those portions of the institution's property ~~as~~ used, even if that use is clearly

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subordinate to the property's majority use for charitable or religious purposes. The Board recognizes a rebuttable presumption in favor of an institution's assertion that an event or series of events are not commercial in nature. However, it will also ascertain the extent to which the activities are in competition with existing commercial enterprises and the fee structure employed in conducting activities or making space available for use by others.

"...The Board, however, must caution the Church and others who hold the welfare exemption that the resumption of any such clearly commercial activities will be considered cause for denial of the welfare exemption to those portions of the property used commercially."

In conclusion, we note that while the Board and assessors jointly administer the welfare exemption, assessors themselves administer the church exemption. Thus, we are forwarding a copy of our letter to Mr. William C. Greenwood who, as Fresno County Assessor, will consider any claim for the church exemption the Church may file.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

cc: Mr. William C. Greenwood
Fresno County Assessor
Mr. Ray Johnson

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton
Mr. William Grommet
Legal Section